

## **FINAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3000 and adopt Section 3334 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Behavior Management Units.

The Department has identified a need to take immediate and appropriate corrective action to prevent inmates from their involvement in disruptive behavior, violence, refusal to participate in inmate programs, intimidation of other inmates, and/or continued noncompliance with CDCR rules and regulations. A minority of noncompliant inmates create a disproportionate amount of disruption for staff and other inmates in our institutions. As a result, the Behavior Modification Unit Pilot Program was implemented pursuant to Penal Code Section 5058.1 on November 21, 2005. This program is designed to modify recalcitrant inmate behavior, reduce the opportunity to repeat the behavior, provide incentives to improve behavior, and provide non-disruptive inmates the ability to program without continual interruption.

Specifically, this program provides alternate General Population (GP) housing and programming for those inmates who are deemed program failures per section 3000, participate in gang activity, refuse to participate in racial integration, refuse to double cell and those released from Administrative Segregation/Security Housing Units (ASU/SHU). This alternate GP housing will allow GP inmates desiring to program without violence or disruptive conduct to do so without being affected by a smaller, more disruptive segment of the inmate population.

The name of the program was changed from its pilot name, Behavior Modification Unit, to Behavior Management Unit (BMU). The Department seeks to amend and adopt regulations which will permanently implement the BMU and provide staff with the necessary tools that will allow them to carry out the application of the BMU in a fair and consistent manner. These regulations will have a positive impact on controlling negative behavior and rewarding positive inmate behavior, and will also further the safety of all persons and the legitimate penological interests of the institutions.

This action will amend the current CCR with language which has been written for clarity and clear reference for staff, inmates, and the public in general.

**Subsection 3000 is amended** to alphabetically merge a definition for the Behavior Management Unit and Disruptive Behavior with those that exist in the regulations.

**New Subsection 3334 is adopted** to begin the major heading entitled Behavior Management Unit.

**New Subsection 3334(a) is adopted** to ensure that the regulatory language makes it clear that a Classification Committee order is the only authorized action to place an inmate into the BMU. This regulatory language will uphold the inmate's due process rights and afford the inmate the opportunity to provide input and/or disagree with the proposed action during the committee hearing.

**New Subsection 3334(b) is adopted** to explain and outline the criteria that will be considered by a Classification Committee to place an inmate into the BMU program. This regulatory language will ensure the requirement for a Classification Committee action to place an inmate in the BMU, is standardized.

**New Subsection 3334(b)(1) is adopted** to include an inmate who is deemed a Program Failure as defined by section 3000 as one of the criteria for placement into the BMU.

**New Subsection 3334(b)(2) is adopted** to include an inmate who is found guilty of an offense which is listed as a Security Housing Unit (SHU) offense per section 3341.5(c)(9) as one of the criteria for placement into the BMU. This provides the department with a housing and programming alternative to the more expensive and limited security housing program.

**New Subsection 3334(b)(2)(A) is adopted** to give staff direction that if an inmate who has been found guilty of an offense for which a determinate term of confinement has been assessed, whether imposed or suspended, or whose in-custody behavior reflects a propensity towards disruptive behavior, the inmate may be referred to a classification committee for placement in the BMU. This regulatory change will provide department staff with more cost effective housing resources in that inmates who meet this criteria may be placed in the BMU in lieu of a traditional SHU which is more expensive and space is limited. This will afford an opportunity for staff to also provide incentives to improve behavior through departmentally approved cognitive behavior programs and/or participation in self help groups.

**New Subsection 3334(b)(2)(B) is adopted** to give staff direction for inmates currently serving a determinate SHU term whose in-custody behavior reflects a propensity towards disruptive behavior, which otherwise would not be eligible for additional SHU term assessment, shall be considered by the Institutional Classification Committee (ICC) for placement in a BMU upon completion or suspension of the SHU term. This language gives the ICC an additional option to have the inmate complete the SHU term or suspend the remainder of the SHU term and determine if BMU placement is appropriate. This regulatory change will enable staff to place disruptive inmates into a BMU, and allow the inmate the opportunity to change his/her disruptive behavior by participating in departmentally approved cognitive behavior programs and/or participate in self help groups prior to being released to the GP.

**New Subsection 3334(b)(2)(C) is adopted** to give staff direction for inmates that have reached the Minimum Eligible Release Date (MERD) and have demonstrated an unwillingness to program in the GP may be reviewed by the ICC for BMU placement consideration. An inmate who has reached their MERD must be released from the SHU and placed back in the GP under current department rules. This regulatory change will allow the department to place an inmate who has clearly demonstrated unwillingness to program in the GP to be placed in the BMU instead. Such placement will mitigate the negative and disruptive impact the inmate would have in the GP if he/she has not had the opportunity to change their disruptive behavior by participating in departmentally approved cognitive behavior programs and/or participate in self-help groups.

**New Subsection 3334(b)(3) is adopted** to include an inmate who is observed participating in Gang Related Activity as one of the criteria for placement into the BMU. Inmates do not have to be validated gang members to exhibit disruptive or intimidating gang behavior in prison. This regulatory language will allow the department to place inmates who participate in gang activity into alternative GP housing, (the BMU), and provide non-disruptive inmates the ability to program without continual interruption by them. Inmates who meet this criteria have proven to be disruptive and potentially a negative influence to the normal programs in the GP. Placing inmates into the BMU who participate in gang activity not only diminishes their ability to negatively influence others, but sends a clear message regarding the department's expectations for dealing with disruptive and gang related behavior. Non-disruptive inmates

therefore can continue their programming which the department intends and hopes will lead to inmate rehabilitation.

**New Subsection 3334(b)(3)(A) is adopted** to give staff direction and highlight any pattern, which consists of two or more documented behaviors, which indicate an individual's participation in gang related activity. This may be grounds for placement in the BMU. This language further gives staff direction that gang related activity is behavior which indicates an inmate's participation in a gang, prison gang, street gang or disruptive group as defined in section 3000 in which documentation must support. This regulatory language will uphold the inmate's due process rights and establish a standard to use for placement into the BMU.

**New Subsection 3334(c) is adopted** to provide staff direction that inmates who meet the criteria for placement in the BMU program per section 3334(b) shall be reviewed by a Classification Committee after initial placement in the BMU program. The language further mandates the Classification Committee review and approve the step change for each BMU inmate as recommended by BMU staff not less than every 30 days. This review is essential to regularly assess the progress or resistance of the inmate in completing the program when placed in the BMU.

**New Subsection 3334(c)(1) is adopted** to define the initial placement period into the BMU which shall be for a minimum of 90 days beginning on the date of reception into the BMU. This regulatory language will establish a directive for placements of inmates into the BMU for the first time.

**New Subsection 3334(c)(2) is adopted** to mandate that subsequent BMU placements shall be for a minimum of 180 days beginning on the date of reception into the BMU. This regulatory language will establish a uniform directive for subsequent placements of inmates into the BMU for the second or consecutive times. Further specific language mandates that inmates who require subsequent placement will be monitored by BMU staff to ensure program compliance. This language also mandates that if an inmate refuses to participate as required, the Classification Committee will review the case for possible program rejection and appropriate alternative housing for the inmate.

**New Subsection 3334(c)(3) is adopted** to establish the mandate for a Classification Committee to complete an initial assessment and develop an Individualized Training Plan (ITP) within 14 days of placement into BMU. The ITP will be based on each inmate's reason(s) for placement as outlined in section 3334(b). This regulatory language sets an action to be performed by the Classification Committee (an ITP) and informs the inmate of his/her program expectations while housed in the BMU.

**New Subsection 3334(c)(4) is adopted** to provide the expectation for inmates to meet the requirements established by the Classification Committee as outlined in the ITP. This regulatory language informs the inmate of the expectation to follow the ITP developed by the Classification Committee and their ability to complete the program, at a pace they can influence, so they can be placed back in the GP.

**New Subsection 3334(c)(5) is adopted** to provide the expectation/criteria that inmates must remain disciplinary free and complete the ITP as directed by the Classification Committee before being released from the BMU and placed back in traditional GP housing. The ITP may include, but is not limited to, participation in departmentally approved cognitive behavior

programs, and/or participation in self help groups. This regulatory language mandates and provides the inmate clear instruction regarding his/her requirements for successful completion of the program. Upon completion of the ITP, the inmate will be released to traditional GP housing.

**New Subsection 3334(c)(6) is adopted** to require that the Classification Committee shall be responsible for providing the inmate with notification of the rules and intent of the BMU program during the initial assessment. This language instructs staff that the CDC 128-G, Classification Chrono (Rev. 10/89), shall clearly state the inmate was informed of the reason for placement, length of placement, and any additional action the inmate must take to successfully complete the BMU program. This regulatory language will uphold the inmate's due process rights by documenting the classification committee action, reason for the action, the guidelines set forth to complete the BMU program and the inmate's agreement or disagreement with the committee's action.

**New Subsection 3334(d) is adopted** to establish the mandate and requirement that in each case of BMU placement, release from the BMU back to traditional GP is based upon completion of the ITP established by the Classification Committee. This regulatory language informs the inmate of his/her requirement to successfully complete the BMU program before being released back to the GP.

**New Subsection 3334(d)(1) is adopted** to make it the responsibility of the Classification Committee to determine if the inmate has successfully completed their ITP requirements or failed to meet their requirements. This language also gives staff direction regarding inmates who have met their ITP requirements. This regulatory language will establish a set of standards for the Classification Committee and inform the inmate of the criteria used to place him/her in the perspective Step as outlined in subsection 3334(e)(1)(A) through subsection 3334(e)(1)D).

**New Subsection 3334(e) is adopted** to begin the major heading entitled BMU Step Process: Work Group/Privilege Group designations.

**New Subsection 3334(e)(1) is adopted** to provide staff direction regarding the assignment of work group designations for all inmates placed into the BMU. Specific mandate to designate a Work Group (WG), consistent with section 3044(b), as determined by a Classification Committee effective the date of placement is clearly given in this regulatory language. This proposed section further mandates that regardless of the WG, the designated Privilege Group (PG), consistent with section 3044(c), for Step 1 and Step 2 shall be C. The designated PG for Step 3 shall be B. Additionally, this section mandates that all Work/Program assignments for BMU inmates shall be restricted to and located in the BMU. This regulatory language will establish a directive for the Classification Committee and inform the inmate of the designated Privilege Group (PG) for each Step regardless of their designated Work Group (WG). This language also establishes a directive for all Work/Program assignments for BMU inmates will be located within the BMU. The step process allows the inmate to decide to what degree and how rapidly they can regain privileges lost when they were first assigned to the BMU.

**New Subsection 3334(e)(1)(A) is adopted** to establish work group and privilege group guidelines for an inmate in Step 1. This section provides direction for staff that if the inmate meets the goals of the ITP, he/she will advance to Step 2.

**New Subsection 3334(e)(1)(B) is adopted** to establish work group and privilege group guidelines for an inmate in Step 2. This section provides direction for staff that if the inmate meets the goals of the ITP, he/she will advance to Step 3.

**New Subsection 3334(e)(1)(C) is adopted** to establish work group and privilege group guidelines for an inmate in Step 3. This section further provides direction for staff that if the inmate meets the goals of the ITP, he/she will advance to Step 4.

**New Subsection 3334(e)(1)(D) is adopted** to establish Step 4. This section further mandates that if an inmate completes the requirements of the ITP and completes Step 4, the inmate will be returned back to traditional GP housing.

**New Subsection 3334(f) is adopted** to mandate and establish the consequences for an inmate's failure to progress in the Step Process. Inmates who fail to progress in the Step Process shall be reviewed by the Classification Committee for program rejection and placement on WG C PG C status. Additionally, this language mandates that inmates who have been rejected from the program shall not be placed in any other general population work or program assignment until they have successfully completed their ITP in the BMU. This language further mandates that inmates who have been rejected from the BMU program must submit a written request to their Correctional Counselor I for readmission to the BMU program and shall be reviewed by a Classification Committee. This mandate will ensure the original intent of the BMU program process as a requirement for inmates to complete their ITP and eventually change their behavior and become a positive, functioning member of the general population. It maintains the sanctions that an inmate cannot simply outlast the program through resistance and non-cooperation.

**New Subsection 3334(g) is adopted** to begin the major heading entitled Authorized BMU Property.

**New Subsection 3334(g)(1) is adopted** to establish the standard of authorized personal property that inmates shall possess while assigned to the BMU. The allowable property, as stated in the ISOR, was part of the Behavior Modification Unit Pilot Program that was implemented on November 21, 2005, under Penal Code Section 5058.1. The department found that taking property away from inmates assigned to the BMU with an incentive of regaining it back through good behavior and programming is a strong motivation. Subsection 3334(g)(1) was been amended for clarification. The reference "personal" was added to distinguish between state issued and personal property. The allowed personal property was modified in response to public comment received during the 45 day public comment period. The accommodation to the allowed personal property is consistent with section 3190, Authorized Personal Property Schedule (APPS), which is currently in regulations.

**New Subsection 3334(g)(1)(A) is adopted** and has been amended for clarification and consistency. The reference "Ring" has been added, the reference "plain" was deleted and replaced with "yellow or white". The reference "Not to exceed \$100 maximum declared value, and may not contain a set or stone" was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(B) is adopted** and has been amended and added for consistency. The reference "Religious Medal and Chain (not to exceed \$100 maximum

declared value, chain not to exceed 18" in length, obtainable as a set only. Chains may not be purchased separately from medal), one." was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(B) was renumbered to 3334(g)(1)(C) to be adopted** and has been amended for clarification and consistency. The reference "Soft cover religious material, one" was deleted and replaced with "Religious Items (as approved by the local religious review committees, e.g. kufi caps, yarmulkes, prayer rugs, etc.)". This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU. It also acknowledges that religious observance can be a path to personal rehabilitation.

**New Subsection 3334(g)(1)(C) was renumbered to 3334(g)(1)(D) to be adopted** and has been amended for clarification and consistency. The reference "Soft cover dictionary, one" was deleted and replaced with "Books, Magazines, and Newspapers (paperback or hardback with cover removed only. Limit does not apply to legal materials), ten". This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU. It also recognizes the potential of reading materials to advance an inmates literacy and education while in the BMU, goals the department supports as part of rehabilitation.

**New Subsection 3334(g)(1)(D) was renumbered to 3334(g)(1)(E) to be adopted** to allow an inmate one pair, as prescribed by a physician, prescription eyeglasses as authorized property while assigned to the BMU which remained the same.

**New Subsection 3334(g)(1)(E) was renumbered to 3334(g)(1)(F) to be adopted** and has been amended for clarification and consistency. The reference "Athletic" was deleted and replaced with "Tennis Shoes (no shades of red or blue, low, mid, or high tops are permitted. Must be predominantly white in color. Shoe laces white only. Not to exceed \$75.00. No hidden compartments, zippers, or laces that are covered or concealed. No metal components including eyelets)". This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(F) was renumbered to 3334(g)(1)(G) to be adopted** to allow an inmate one pair of shower shoes as authorized personal property while assigned to the BMU and has been amended for clarification and consistency. The reference "(foam or soft rubber, single layer construction, not exceeding 1" in thickness)" was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS).

**New Subsection 3334(g)(1)(G) was renumbered to 3334(g)(1)(AH) to be adopted** and has been amended for clarification and consistency. The reference "Lined paper tablet" was deleted and replaced with "Legal Pads/Tablets and Notebooks (no spiral bound)". This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(H) was renumbered to 3334(g)(1)(AI) to be adopted** and has been amended for clarification and consistency. The reference "Embossed" was deleted and replaced with "Blank and/or Pre-Stamped". The reference "fifteen" was deleted and replaced

with “forty”. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(H) was added to be adopted** for consistency. The reference “Briefs (white only), ten pairs.” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(I) was renumbered to 3334(g)(1)(AK) to be adopted** to allow an inmate legal material, as authorized per section 3161, as authorized personal property while assigned to the BMU which remained the same.

**New Subsection 3334(g)(1)(I) was added to be adopted** for consistency. The reference “Gloves (cold weather gloves upon approval of Warden, no zippers, pockets, or metal), one pair” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(J) was renumbered to 3334(g)(1)(AR) to be adopted** to allow an inmate canteen items, not to exceed one month’s draw of assigned privilege group, as authorized personal property while assigned to the BMU which remained the same.

**New Subsection 3334(g)(1)(J) was added to be adopted** for consistency. The reference “Watch Cap (no black, cold weather watch caps upon approval of Warden), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(K) was added to be adopted** for consistency. The reference “Rain Coat/Poncho (transparent only), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(L) was added to be adopted** for consistency. The reference “Socks (white only, any combination of short to knee-high), seven pairs” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(M) was added to be adopted** for consistency. The reference “Under Shirts (white only, any combination of crew neck, v-neck, long sleeve or sleeveless athletic tank-top. Turtle neck and mock turtle neck are not permitted), five pairs” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(N) was added to be adopted** for consistency. The reference “Dental Adhesive (for approved denture wearers only), two” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(O) was added to be adopted** for consistency. The reference “Dental Flossers/Gliders (no more than 3” in length, amount allowed in possession to be determined by local institutional procedure)” was added. This language is consistent with CCR

3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(P) was added to be adopted** for consistency. The reference “Dental Cleanser, one box” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(Q) was added to be adopted** for consistency. The reference “Deodorant/Antiperspirant (stick or roll-on, must be clear and in clear container only), four” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(R) was added to be adopted** for consistency. The reference “Medications, Over-The-Counter (OTC) (only those OTC medications permitted by the Division of Correctional Health Care Services shall be stocked by institution canteens, OTC medications are not approved for inmate packages)” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(S) was added to be adopted** for consistency. The reference “Mouthwash (non-alcoholic only), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(T) was added to be adopted** for consistency. The reference “Palm Brush/Comb (no handle, plastic only), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(U) was added to be adopted** for consistency. The reference “Razor, Disposable (not permitted in Level IV 180 design housing), five” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(V) was added to be adopted** for consistency. The reference “Shampoo, one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(W) was added to be adopted** for consistency. The reference “Shaving Cream (non-aerosol), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(X) was added to be adopted** for consistency. The reference “Soap, Bar, six” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(Y) was added to be adopted** for consistency. The reference “Soap Dish (non-metal), one” was added. This language is consistent with CCR 3190,



Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(Z) was added to be adopted** for consistency. The reference “Toothbrush (subject to local determination of maximum length, local facility is required to shorten if necessary, to meet local requirements), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AA) was added to be adopted** for consistency. The reference “Toothbrush Holder (plastic only, may only cover head of toothbrush), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AB) was added to be adopted** for consistency. The reference “Toothpaste/Powder (toothpaste must be clear and in clear container), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AC) was added to be adopted** for consistency. The reference “Washcloths (white only), two” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AD) was added to be adopted** for consistency. The reference “Address Book (paperback only, 3” x 5” maximum), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AE) was added to be adopted** for consistency. The reference “Ballpoint Pens (non-metal, clear plastic only), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AF) was added to be adopted** for consistency. The reference “Bowl (construction material to be approved by Division of Adult Institution (DAI), maximum of 8” in diameter), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AG) was added to be adopted** for consistency. The reference “Can Opener (restricted from Level IV housing), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(G) was renumbered to 3334(g)(1)(AH) to be adopted** and has been amended for clarification and consistency. The reference “Lined paper tablet” was deleted and replaced with “Legal Pads/Tablets and Notebooks (no spiral bound)”. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(H) was renumbered to 3334(g)(1)(AI) to be adopted** and has been amended for clarification and consistency. The reference “Embossed” was deleted and replaced with “Blank and/or Pre-Stamped”. The reference “fifteen” was deleted and replaced with “forty”. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AJ) was added to be adopted** for consistency. The reference “Envelopes, Metered (indigent inmates only), five” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(I) was renumbered to 3334(g)(1)(AK) to be adopted** to allow an inmate legal material, as authorized per section 3161, as authorized personal property while assigned to the BMU which remained the same.

**New Subsection 3334(g)(1)(AL) was added to be adopted** for consistency. The reference “Photos/Portraits (maximum of 8” x 10”), fifteen” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AM) was added to be adopted** for consistency. The reference “Reading Glasses-Non Prescription (magnifying glasses), one pair” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AN) was added to be adopted** for consistency. The reference “Stamps (U.S. Postal only), forty” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AO) was added to be adopted** for consistency. The reference “Stationary (for written correspondence, may be decorated and have matching envelopes), fifteen sheets” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AP) was added to be adopted** for consistency. The reference “Tumbler (construction material to be approved by DAI, 16 ounce or less), one” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(AQ) was added to be adopted** for consistency. The reference “Health Care Appliance (Dr. Rx. Only. Not subject to the six-cubic foot limit)” was added. This language is consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property while assigned to the BMU.

**New Subsection 3334(g)(1)(J) was renumbered to 3334(g)(1)(AR) to be adopted** to allow an inmate canteen items, not to exceed one month’s draw of assigned privilege group, as authorized personal property while assigned to the BMU which remained the same.

**New Subsection 3334(g)(2) is adopted** to establish the standard that inmates in the BMU shall possess personal property as authorized in section 3190(c) and 3334(g)(1). This Subsection was amended for clarification and consistency. The reference “personal” and the reference “and 3334(g)(1)” was added. This language makes it more clear what specific property will be allowed in the BMU. The combined volume of state-issued and allowable personal property items shall not exceed six cubic feet, except as specifically allowed in these regulations.

**New Subsection 3334(g)(3) is adopted** to give staff direction and establish the standard for inmates assigned to the BMU, upon initial placement, will have their personal property, not identified as authorized BMU property outlined in 3334(g)(1) and 3334(g)(2) stored, provided that established provisions are met as provided below. This Subsection was amended for clarification and consistency. The reference “unauthorized” was deleted and replaced with “personal”. The reference “not identified as authorized BMU property” was added and the reference “as” was deleted. This language makes it clear what specific property will be stored for the inmate while he/she is housed in the BMU. The department found that taking property away from inmates assigned to the BMU with an incentive of regaining it through good behavior and programming is a strong motivation. In addition, property that is stored rather than “sent home” provides an incentive for good behavior since their personal property can be returned quickly.

**New Subsection 3334(g)(3)(A) is adopted** to establish a provision for an inmate to have their property stored if initial BMU placement is for no more than 90 days. Due to the institutions limited physical design, local institution security and facility needs create an inability to store property for a longer time period.

**New Subsection 3334(g)(3)(B) is adopted** to establish a second provision for an inmate to have their property stored if the inmate participates in the BMU program and progresses to the next step at each 30 day review as outlined in section 3334(e) above. Again, the department found that taking property away from inmates assigned to the BMU with an incentive of regaining it through good behavior and programming is a strong motivation.

**New Subsection 3334(g)(3)(C) is adopted** to establish a third provision for an inmate to have their property stored if the inmate does not receive any property related disciplinary violations while in the BMU program. Again, the department found that taking property away from inmates assigned to the BMU with an incentive of regaining it through good behavior and programming is a strong motivation.

**New Subsection 3334(g)(4) is adopted** to provide staff direction and inform the inmate that if he/she fails to comply with the provisions stated above, all unallowed personal property not identified as authorized BMU property outlined in 3334(g)(1) and 3334(g)(2) shall be disposed of as provided in section 3191(c). This Subsection was amended for clarification and consistency. The reference “these” and “unauthorized” was deleted and replaced with “the” and “unallowed”. The reference “personal” and “not identified as authorized BMU property” was added and the reference “as” was deleted. This language makes it clear what specific property will be disposed of, while the inmate is housed in the BMU, if the provisions in 3334(g)(3) are not met. The department found that inmates are more likely to demonstrate good behavior and successfully participate in their program as an incentive if certain privileges such as personal property, are allowed or can be regained.

**New Subsection 3334(g)(5) is adopted** to establish a standard for inmate's assigned to the BMU upon their second or subsequent placements shall have all personal property, not outlined in 3334(g)(1) and 3334(g)(2), disposed of as provided in section 3191(c). This Subsection was amended for clarification and consistency. The reference "unauthorized" was deleted. The reference "personal" was added and the reference "as" was deleted and replaced with "not". This language is consistent with the reference to property as listed in 3334(g)(3) above. Again, the department found that inmates are more likely to demonstrate good behavior and successfully participate in their program as an incentive if promised certain privileges. When inmates realize that those privileges will be lost due to disruptive behavior and continued noncompliance with CDCR rules and regulations, they tend to successfully program without participating in disruptive behavior.

**New Subsection 3334(h) is adopted** to establish the process for the Canteen program for the BMU. Specifically, BMU inmates will be allowed only one (1) draw per month as authorized in section 3044(c). Canteen privileges shall be established by the Classification Committee as follows:

- Step 1 – One-fourth the maximum canteen draw as authorized in section 3044(f)
- Step 2 – One-fourth the maximum canteen draw as authorized in section 3044(f)
- Step 3 – One-half the maximum canteen draw as authorized in section 3044(e).

This regulatory language sets standards for the Classification Committee. This language also informs the inmate of his/her maximum allowed canteen draw based on their designated Step established by the Classification Committee as outlined in subsection 3334(e).

**New Subsection 3334(i) is adopted** to establish the process for Vendor packages in the BMU. Specific direction is given to staff that Vendor packages are authorized for receipt by inmates housed within the BMU in accordance with their privilege group status as authorized in section 3044(c).

**New Subsection 3334(j) is adopted** to establish guidelines and mandates for Mental Health Services in the BMU. Specific direction is given to staff that BMU inmates will be seen by the Mental Health Department in accordance with normal general population treatment expectations as outlined within the Mental Health Services Delivery System (MHSDS). This language also mandates that a Mental Health clinician shall attend the Classification Committee for all initial reviews in order to assess the appropriateness of BMU placement for an inmate included in the MHSDS. Inmate's currently at the Enhanced Out Patient (EOP) level of care are not eligible for BMU placement. This section is included to ensure that the mandates of the MHSDS of the CDCR are upheld and further mandates a Mental Health clinician is included as a member of the Classification Committee action for all initial reviews for inmates referred for the BMU program. This language will also inform inmates that a designated MHSDS staff member will be present to provide any information to the inmate as well as the Classification Committee concerning mental health. It meets the standards for mental health treatment of inmates set out in the Coleman case.

**New Subsection 3334(k) is adopted** to establish the process for visits in the BMU. This language mandates that BMU inmates are permitted visits with their approved visitors. All visits for inmates at Step 1 and 2 will be non-contact, which includes attorney visits. This language also provides inmates at Step 3 to be afforded contact visits. This language also informs the inmate of his/her visiting status based on their designated Step established by the

Classification Committee as outlined in section 3334(e). Visiting is a privilege for inmates. By restricting visits to non-contact during Step 1 and 2, an incentive remains for the inmate to improve their behavior and conform to the rules and regulations to be able to regain contact visiting privileges, a privilege cherished by many inmates.

### **DETERMINATION:**

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, report, or similar document.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

### **PUBLIC HEARING COMMENTS:**

Public Hearing was held on September 18, 2008 from 09:00 a.m. to 10 a.m. in the Corrections Standards Authority, Large Conference Room, 660 Bercut Drive, West Entrance, Sacramento, CA 95814.

**No Public Comments were made during Public Hearing.**

### **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

#### **Commenter #1:**

**Comment 1A:** Commenter asks if Special Needs Yard (SNY) will be affected by the proposed changes contained within Notice of Change to Regulations No. 08/03?

**Accommodation:** None.

**Response 1A:** The Department contends that proposed regulations relating to the Behavior Management Unit (BMU) will affect Sensitive Need Yards (SNY) if the institution(s) that have these designated yards choose to operate a BMU on these facilities. If an inmate's behavior qualifies them for a BMU, they may be assigned to a BMU either at their institution or if they are transferred to an institution with a BMU.

**Comment 1B:** Commenter asks if SNY yards are to be affected, can you please state how?

**Accommodation:** None.

**Response 1B:** Please refer to Commenter #1, Response 1A in regards to how SNY yards will be affected.

**Comment 1C:** Commenter asks if SNY yards are to be affected, can you estimate the time frame for those changes? BMUs were piloted in a few institutions and are now being adopted into regulations on a permanent basis. The number and location of BMUs will be determined by department need and resources.

**Accommodation:** None.

**Response 1C:** Please refer to Commenter #1, Response 1A in regards to the time frame SNY yards will be affected.

**Comment 1D:** Commenter asks if beyond the above referenced notice, are there any changes in the near future that persons housed on SNY yards might anticipate.

**Accommodation:** None.

**Response 1D:** The department interprets the comment to ask about future changes to SNY yards. This comment is outside the scope of the proposed regulatory action. The Behavior Management Unit not SNY yards is the subject of this rulemaking.

## **Commenter #2:**

**Comment 2A:** Commenter states that this program is not good for anyone and they are going back into the inmate's C-file and calling people program failures only because they can. Most of the time it's done because they don't like what they see in the C-file and then they put you in the program.

**Accommodation:** None.

**Response 2A:** Section 3334(b)(1) in the proposed regulations state inmates may be referred to a Classification Committee for placement into the BMU for one or more of the following reasons: (1) Program Failure. The inmate is deemed a Program failure as defined by section 3000. Program failure is defined as "any inmate who generates a significant disciplinary history within the last 180 days from the current date. A guilty finding for two serious Rules Violation Reports or one serious and two administrative Rules Violation Reports within that 180 day time period is reasonable evidence of a significant disciplinary history and may be considered a program failure". If a Classification Committee determines that an inmate is a Program failure, the decision is based on this criterion as outlined in CCR, Title 15. The departments actions

concerning BMU eligibility therefore, are not arbitrary or personalized but based on publicly adopted standards and rules.

**Comment 2B:** Commenter states that inmates are put in this program that no one has heard of and they can't find any information on it to fight it.

**Accommodation:** None.

**Response 2B:** Administrative Bulletin (AB) 05/02 announced the Behavior Modification Unit Pilot Program that was implemented on November 21, 2005 pursuant to pilot program authority in Penal Code Section 5058.1. This program was designed to modify recalcitrant inmate behavior, reduce the opportunity to repeat the behavior, provide incentives to improve behavior, and provide non-disruptive inmates the ability to program without continual interruption. Six (6) institutions participated in the pilot program which included High Desert State Prison (HDSP), Calipatria State Prison (CAL) California Correctional Institution (CCI), Pelican Bay State Prison (PBSP), Substance Abuse Treatment Facility and State Prison at Corcoran California (SATF), and Salinas Valley State Prison (SVSP). These institutions developed an Operational Procedure (OP) that followed and implemented AB 05/02 for that specific institution. Inmates have access to all AB's and Op's that are not restricted, which AB 05/02 was not designated as restricted. The department is now adopting the BMU program permanently and members of the public have been noticed and their comments received.

**Commenter #3:**

**Comment 3A:** Commenter states the solution to managing inmates is not to take away property for 90 to 180 days or even send it home or destroy it.

**Accommodation:** None.

**Response 3A:** The department has found from the BMU pilot program that taking property away from inmates assigned to the BMU with an incentive of regaining the property back through good behavior and programming is a strong motivation.

**Commenter #4:**

**Comment 4A:** Commenter states that the current list of allowable property only allows for "soft cover religious material, one." To be very frank, this just doesn't work for any religious group, except for maybe Christians.

**Accommodation:** Yes.

**Response 4A:** The department has elected to accommodate this comment by allowing religious items (as approved by the local religious review committees) e.g. kufi caps, yarmulkes, prayer rugs, etc. This accommodation is also keeping in compliance with current regulations for inmate property outlined in CCR, Title 15, section 3190 and 3213.

**Comment 4B:** Commenter states that the restriction on religious material should be changed to "religious material and items are authorized in accordance with Section 3213 of the California Code of Regulations, Title 15."

**Accommodation:** Yes.

**Response 4B:** Please refer to Commenter #4, Response 4A for accommodation.

**Commenter #5:**

**Comment 5A:** Commenter states the current proposal for BMU makes reference to “program failure” already used to qualify “C-status” inmates, meaning (2) Rule Violation Reports (RVR) CDC-115 within 6 months. The language is too vague and does not illustrate caliber of RVR nor is “C-status” now inclusive with BMU.

**Accommodation:** None.

**Response 5A:** The department did not fully understand the comment. In regards to Program failure as defined in CCR, Title 15, section 3000 used to qualify C-status inmates, please refer to Commenter #2, Response 2A. Inmates placed on Work Group C/Privilege Group C (C-status) are not the only inmates eligible for a BMU.

**Comment 5B:** Commenter states that the proposal also makes reference that these “program failures” that are currently defined under Section 3000, CCR, Title 15 will be allowed to store appliances (90) days. Does this now become standard policy state wide for “C-status” inmates also?

**Accommodation:** None.

**Response 5B:** The Department contends that the proposed regulations relating to the Behavior Management Unit (BMU), reference the BMU only and will apply to inmates that are housed in a BMU program. The purpose of storing property for BMU inmates is to keep an incentive to correct their behavior. However, such storage will continue only if the inmate makes progress through the BMU Steps.

**Comment 5C:** Commenter states that the language is too vague. An example is the reference to “GP” which is mentioned, but does not include “SNY” or “TPU” (acronym unknown).

**Accommodation:** None.

**Response 5C:** In regards to the reference of “GP”, but not “SNY” or “TPU”, please refer to Commenter #1, Response 1A. The important criteria is not an inmate’s status as SNY or TPU, but whether their conduct and behavior qualify them as a program failure or whether they meet the criteria under section 3334(b) as proposed.

**Commenter #6:**

**Comment 6A:** Commenter states that the department contends that taking property away from inmates assigned to the BMU, with an incentive of regaining it back through good behavior and programming, is a strong motivation. Observing the inmate population here at Pelican Bay State Prison (PBSP), I find such a claim to be specious. Such tactics ensure good behavior only throughout the duration of one’s stay in the BMU. What statistical information do you have to show that the BMU is anything more than a palliative?



**Accommodation:** None.

**Response 6A:** In February 2008, the Office of Research, Adult Research Branch within CDCR, completed an evaluation report of the Behavior Modification Unit Pilot Program at High Desert State Prison. A total of 164 inmates were placed in the BMU program at HDSP during the period between November 21, 2005 and July 31, 2007. The findings indicated that the BMU program was effective in reducing the recalcitrant behavior of the 76 inmates who successfully completed the program. Specifically, the inmates that completed the BMU program had almost 6 times more Rule Violation Reports (RVR) before entering the BMU than after completing the BMU program. The evaluation also included an analysis of the BMU allowing non-disruptive inmates the ability to program with fewer interruptions. Since it was not possible to identify non-disruptive inmates, this analysis focused on RVR's that occurred within the GP. The findings indicated that the number of RVR's issued at HDSP was 11.4% lower after the program was implemented, which suggests that the BMU program may reduce the number of disruptions inmates within the GP units experience by removing a small disruptive group to the BMU.

**Comment 6B:** Commenter states/asks what kind of verifiable information do you have to show that the 'self-help' classes that you're proposing are psychologically beneficial? I find them to be invasive and I am informed that to implement such classes requires a court order.

**Accommodation:** None.

**Response 6B:** The department disagrees. The department notes that the commenter and his observations are based on experiences at PBSP, an institution whose inmate population is among the most incorrigible of all CDCR's inmate populations. Nonetheless, this program was designed to modify recalcitrant inmate behavior, reduce the opportunity to repeat the behavior, provide incentives to improve behavior, and provide non-disruptive inmates the ability to program without continual interruption. Among the self-help and treatment curricula are courses entitled "A Framework for Breaking Barriers" and "A Framework for Recovery". These are produced by a national publishing house whose clients include the Department of the Army, Federal Bureau of Prisons, State Corrections departments in Oregon, Idaho, New Mexico, and Virginia, as well as Ford Motor Company, John Deere and Merck & Company. The course entitled "Cage Your Rage" was developed from a successful program created by the Saskatchewan Penitentiary in Canada. It has been adopted by several Canadian institutions as well as CDCR. The author is a Correctional Psychologist. Alcoholics Anonymous and Narcotics Anonymous have a long and international reputation for helping many people to stop substance abuse and avoid returning. During this two year pilot program, facilitated treatment, educational and self-help groups were included in the Individualized Training Plan (ITP) for each inmate assigned to the BMU. The primary goal of the program is the successful reintegration of program failures into the mainstream prison population. The Legislature, Little Hoover Commission, Office of the Inspector General, and various other entities have identified a critical need to reduce violent behavior within the prison system, as well as the need to prepare inmates in special housing units to join the general population or to be released back into the community with cognitive tools to control their anger. Based on the pilot program, CDCR has determined that these programs that are part of a BMU have been successful compared to past practices.

**Comment 6C:** Commenter states that it is justifiable to assign an inmate to the BMU at the conclusion of an Administrative Segregation (Ad. Seg.)/Security Housing Unit (SHU) term if

said inmate is shown to be recalcitrant and disruptive throughout their Ad. Seg./SHU term, but to assign an inmate who has remained disciplinary free throughout their Ad. Seg./SHU term to BMU at the conclusion of said term is a direct violation of the Constitutional protection against double-jeopardy. This should be stipulated in the newly adopted Article 6.5, Section 3334.

**Accommodation:** None.

**Response 6C:** Section 3334(b)(2)(B) and (C) of the proposed regulations address this concern. Inmates currently serving a determinate SHU term whose in-custody behavior reflects a propensity towards disruptive behavior shall be considered for placement in a BMU upon completion or suspension of the SHU term. Also, inmates that have reached the Minimum Eligible Release Date (MERD) and have demonstrated an unwillingness to program in the general population may be reviewed for BMU placement consideration. In both cases, the inmate has not remained disciplinary free and still presents a safety and security concern to the institution but is not eligible for an additional SHU term assessment. Those who have not demonstrated disruptive behavior or an unwillingness to program while in the SHU are not mandated for consideration for a BMU.

**Commenter #7:**

**Comment 7A:** Commenter states that the rule change violates Penal Code, Section 2600 as not being a legitimate Pena logical (sic) interest (see Turner vs. Safely [1987] 182 u.s. 78, 89-91). Therefore, I oppose NCR 08/03 as being stupid, harebrained, costly and a fascist dictation to select out underprivileged for social adjustment.

**Accommodation:** None.

**Response 7A:** In regards to the reference of Penal Code, Section 2600 as not being a legitimate penological interest, please refer to Commenter #6, Response 6B. Inmates who have not shown by their behavior in the SHU that they are ready to return to the GP will be considered for an alternate GP placement (BMU) to provide them additional tools and incentives to change their behavior.

**Commenter #8:**

**Comment 8A:** Commenter states in regards to new subsection 3334(g)(1), establishing the standard of authorized property that inmates shall possess while assigned to BMU, a television should be considered for the Individualized Training Plan (ITP) courses to be watched via video. Pelican Bay State Prison and many other prisons have been known for many long periods of lockdowns months at a time. During these situations of prison lockdowns, no work groups (WG) or privilege groups (PG) classes in the BMU can be conducted. Inmates in the BMU are only given pamphlets in their cells with no direction or guidance provided by ITP staff regarding assignments or BMU requirements for advancement of its steps for the completion of the program so that the inmate may return to his traditional general population (GP) housing. Furthermore, inmate's who speak only Spanish and no translation can be provided, ITP courses via video can be viewed through their television for a better opportunity for completion of his BMU program. Inmates taking the G.E.D. course, via video study courses, can continue their course and stay on track.

**Accommodation:** None.

**Response 8A:** Even though the Commenter purposes a valid concern and option to address the concern, the department can not accommodate at this time. The State of California, as well as the department, are in a current financial crisis and do not have the financial ability to make the physical plant alterations that may be required to provide the access to educational programs via video for all BMU's. The proposed regulations do not allow inmates to possess personal appliances while assigned to the BMU in keeping consistent with CCR 3190, Authorized Personal Property Schedule (APPS) for authorized personal property.

**Commenter #9:**

**Comment 9A:** Commenter states that this proposal has a high potential of being arbitrarily abused by rogue Correctional Officers without adequate safe guards to prevent its abuse. The use of a Classification Committee is not enough to ensure that an inmate's constitutional rights are not violated because the determination of an inmate's suitability is based solely on the discretion of the Classification Committee which is based on a Correctional Officer recommendation.

**Accommodation:** None.

**Response 9A:** Section 3334(b) of the proposed regulations outlines the three (3) reasons a Classification Committee can assign an inmate to the BMU. These proposed regulations uphold the inmate's due process by a standardized policy which imposes criteria governing staff decisions affecting an inmate's conditions or length of confinement to the BMU. CCR, Title 15, section 3084.1 Right to Appeal, gives any inmate or parolee under the department's jurisdiction the ability to appeal any departmental decision, action, condition, or policy. The appellant can demonstrate how CDCR rules have been violated having an adverse effect upon their welfare.

**Comment 9B:** Commenter states an inmate's time in a BMU program mirrors that of the Security Housing Unit (SHU) and the Administrative Segregation Unit (Ad. Seg.). Therefore, an inmate being released from these above units after serving their prescribed time will still be subjected to being placed additionally into a BMU program which is double jeopardy in essence to a SHU program.

**Accommodation:** None.

**Response 9B:** In regards to the reference of double jeopardy, please refer to Commenter #6, Response 6C. An inmate in SHU or Ad. Seg. can avoid consideration for a BMU placement by remaining free of disruptive behavior and rules violations.

**Comment 9C:** Commenter states that the Individualized Training Plan (ITP) is flawed and doesn't allow adequate second chances. If an inmate is not able to complete his/her ITP, then the inmate is dropped out of the program indefinitely until he/she reapplies for reentry. The inmate will not comply further because he/she would have no incentive to do so and this would cause more conflict between staff and inmates.

**Accommodation:** None.

**Response 9C:** Section 3334(e) of the proposed regulations establishes the BMU Step Process: Work Group/Privilege Group (WG/PG) designations. Section 3334(f) in the proposed regulations establishes the process for an inmate's failure to progress in the Step Process. Inmates who fail to progress in the Step Process shall be reviewed by the Classification Committee for program rejection and placement on WG C PG C status. Inmates who have been rejected from the program shall not be placed in any other general population work or program assignment until they have successfully completed their ITP in the BMU. Inmates who have been rejected from the BMU program must submit a written request to their Correctional Counselor I for readmission to the program and shall be reviewed by a Classification Committee. This mandate will ensure the original intent of the BMU program process as an incentive for inmates to complete their ITP and eventually change their behavior and become a positive, functioning member of the general population. It maintains the sanctions so that an inmate cannot simply outlast through resistance and non-cooperation. Very few inmates (less than 12 out of more than 400 inmates placed in over two years at Pelican Bay State Prison) have been rejected from the program. The lack of repeat offenders support the deterrent and self help elements emphasized and applied in this program.

**Comment 9D:** Commenter states that inmates who are on C-status will also be arbitrarily punished extendedly. The BMU mandates at least 90 days prior to release. Existing regulations allows for an inmate on C-status to apply for status change after 30 days. The BMU proposal will be contradictory and violating inmate's rights through existing regulations.

**Accommodation:** None.

**Response 9D:** Section 3334(c) of the proposed regulations establish a Classification Committee review to determine, assess the appropriate step and if applicable approve a step change as outlined in section 3334(e) for each BMU inmate not less than every 30 days. Section 3334(e)(1) designates the Privilege Group (PG) as C for Step 1 and 2 regardless of the designated Work Group (WG). The designated PG for Step 3 shall be B which can be achieved during the inmate's second 30 day (60 days) review. CCR, Title 15, section 3044(f)(C) states in part, "an inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C." This equates to a 60 day period permissible for PG C before any hearing is scheduled to review and consider removal from PG C is mandated. The BMU program is designed for inmates who have presented management concerns through their persistent behaviors. Contingent upon the inmate's favorable progress in this short program, his/her privilege group status will be returned in an expeditious manner.

**Commenter #10:**

**Comment 10A:** Commenter states/asks if this program was continued for the reasons to deprive individuals of their Constitutional rights to be free from cruel and unusual punishments (such as unlawful detainments), the failure to comply with the laws in complying with the Administrative Procedures Act (APA) for this program.

**Accommodation:** None.

**Response 10A:** The BMU program was properly adopted as a pilot program under Penal Code 5058.1 and enacted as an emergency regulation in accordance with Penal Code 5058.3. The CDCR asserts it is in compliance with the APA. Although some of the above comments/objections do regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

**Commenter #11:**

**Comment 11A:** Commenter states that the foremost relevant reason to be considered during this public comment period would be the direct and indirect adverse financial burden being incurred by CDCR for the maintenance of the BMU program which is ultimately absorbed by the State of California.

**Accommodation:** None.

**Response 11A:** The cost of this program is significant in that it requires a higher staff to inmate ratio for the custodial, classification and educational elements associated with the program than GP. The cost is offset to a great degree when you consider that many of those inmates eligible for BMU may be housed or were recently housed in a segregated program housing unit such as a Security Housing Unit (SHU) and/or Administrative Segregation (Ad. Seg.). Cost associated with the SHU and/or Ad. Seg. are projected and about two times the cost of an inmate housed in a BMU. The successful transition of an inmate that could have been housed for an extended and sometimes multiple periods of segregated housing also has value in that it could influence the future conduct of the inmate. The ability to house problematic inmates away from programming inmates also serves that group of inmates who wish to program without interruption. The BMU program requires more staff and therefore more resources which the department must absorb within the current operating budget. But the current housing alternatives, SHU and Ad. Seg., have proven to be limited and more expensive than this program is designed to be.

**Comment 11B:** Commenter states that the BMU program restricts inmates from personal appliances and limits all reading material to only one book, magazine or newspaper. The Security Housing Unit (SHU) allows inmates to possess at least one personal appliance and up to ten items of reading material. It is hypocritical and subsequently ineffective to subject inmates to a sensory deprived environment that is predicated on stricter standards than that of the SHU, but receives inmates for lesser rule violations.

**Accommodation:** Yes.

**Response 11B:** The department has elected to accommodate this restriction by allowing books, magazines, and newspapers (paperback or hardback with cover removed only. Limit does not apply to legal materials), a total of ten. This accommodation is also keeping in compliance with current regulations outlined in CCR, Title 15, section 3190. Inmates housed in the BMU are allowed to participate in integrated yard/exercise programs. BMU inmates are allowed mail, periodicals, religious study materials and educational materials; in addition to participation in an integrated classroom setting. The allowance for certain privileges in the SHU is accomplished with the extensive physical barriers associated with this type of program;

however, the goal of the BMU program is to change the inmates' disruptive behavior and become a positive, functioning member of the general population where there are less physical controls.

**Commenter #12:**

**Comment 12A:** Commenter states that the proposed restrictions on movement, property, programs and time credits within the BMU are equal to or more restrictive than the restrictions in the SHU, PSU, PHU, Ad. Seg. Yet, the due process protection proffered [SIC] by the proposed BMU are incompetent and fall short of the constitutional standard set by the courts for restrictions on prison liberties. By designating the BMU as General Population Housing, the department is being disingenuous. As General Population housing, they are not required to provide constitutional due process while greatly restricting conditions of confinement and liberty interests. This violates the Equal Protection Clause (14<sup>th</sup> Adm.) and Due Process (14<sup>th</sup> & 5<sup>th</sup> Adm.) of the U.S. Constitution as well as Article 1 sec. 7 of the California Constitution.

**Accommodation:** None.

**Response 12A:** The BMU is alternate general population housing. The BMU is a housing unit on a general population yard. Each inmate must first meet the established criteria as outlined in section 3334(b) of the proposed regulations to be considered for placement into the BMU. Inmates who meet these criteria in the past were generally placed in Privilege Group C under existing regulations. BMU inmates remain in Privilege Group C, and the privileges and property restrictions in the BMU are consistent with those of Privilege Group C. Further, the privilege and property restrictions in the BMU are not more restrictive than segregated housing units. Inmates housed in BMU are allowed to exchange books on a one for one basis, if available, and allowed to access the inmate library resources as other general population inmates are afforded. Other study materials forwarded by a religious group or a Chaplain are also allowed to be retained by the inmate while housed in the BMU as these articles are treated as mail. Inmates housed in the BMU are allowed to participate in integrated yard/exercise programs. BMU inmates are allowed mail, periodicals, religious study materials and educational materials; in addition to participation in an integrated classroom setting.

The BMU does not constitute punishment and therefore additional due process beyond Classification Committee placement in the program is not required. While an inmate may view the restrictions as punishment, the actual intent of CDCR in establishing the BMU is to change the inmates' disruptive behavior and become a positive, functioning member of the prison population. The BMU program is an attempt to provide staff with different housing options and programs to address the small percentage of disruptive inmates whose behavior is not corrected through administrative remedies permitted in current regulations.

CCR, Title 15, section 3084.1 Right to Appeal, gives any inmate or parolee under the department's jurisdiction may appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare. Any action that is made concerning the inmate's program status is accomplished through a classification committee with input from the affected inmate. The committee's action is recorded on a CDC 128-G Classification Chrono as outlined in section 3334(c)(6) in the proposed regulations. As a result, these regulations provide sufficient due process.

CDCR sees no equal protection violation. No suspect class is being discriminated against on the basis of race, gender, or other suspect classifications. Inmates in the BMU are placed there because of disruptive behavior. Even if this were to qualify as discrimination, it is permissible under the Constitution if there is a legitimate governmental interest supporting it. Since the actual intent of CDCR in establishing the BMU is to change the inmates' disruptive behavior and become a positive, functioning member of the prison population, CDCR clearly has a legitimate governmental interest in maintaining safety and security in the institution sufficient to pass muster under the federal and California constitutions.

**Comment 12B:** Commenter states the BMU Due Process as proposed provides a mere 'committee review' (pp.3334), a vague clause which should be interpreted to mean the lesser 'Unit Classification Committee' which handles only general population issues, as opposed to the 'Institutional Classification Committee' which wields warden level authority. This violates the Equal Protection clauses. All segregation decisions are made by 'Institutional Classification Committees' (i.e. ICC, FCC).

**Accommodation:** None.

**Response 12B:** The BMU is designated as alternative general population housing. The proposed regulations make reference to a 'Classification Committee' to allow different classification committees outlined in CCR, Title 15, section 3376(c) to be able to perform this function of the proposed regulations. What will determine the composition of the committee will be the current housing assignment of the inmate. Inmates that are housed in a segregated program housing unit will have their cases reviewed by an Institution Classification Committee (ICC) or Facility Classification Committee (FCC) as outlined in section 3376(d). Inmates that are housed in the general population will have their cases reviewed by an Initial and Unit Classification Committee (UCC) as outlined in section 3376(d).

**Comment 12C:** Commenter states that BMU placement and supervision should be placed under the auspices of CCR, Title 15, Article 7 which is already in place to provide Due Process for segregated housing units. Its designation as 'General Population' is in violation of the Equal Protection clause, in that inmates housed in the same institution will be treated differently while having the same statutory designation. If BMU inmates are to be classified as 'General Population', then they must be permitted to possess the same amount of allowable personal property as other general population inmates housed in the same institution.

**Accommodation:** None.

**Response 12C:** Many inmates housed in the general population are placed onto Work Group C/Privilege Group C (C-Status) as result of their conduct and designated as a 'program failure' as defined in CCR, Title 15, section 3000. These inmates are then allowed more restrictive privileges and property as outlined in CCR, Title 15, section 3044(b), 3044(f) and 3190 which is very similar to the BMU program. The Classification Committee reviews required by the BMU proposed regulations are more frequent, every 30 days per section 3334(c), than Classification Committee reviews in segregated housing program units.

**Comment 12D:** Commenter states that in its proposal for the creation of the BMU, the department makes no assessment acknowledgement and/or preparation for the long term (6 mos. +) retention of inmates in the BMU. The CDCR clearly anticipates a percentage of the inmate population completely failing or refusing to participate in its step program, yet it makes

no mention of them. In creating the 'Program Rejection' status, the CDCR is acknowledging that a percentage of inmates will not comply with this program, no matter how much property that is taken from them and/or other deprivations proposed in the BMU scenario. It is clear that at the 'Program Rejection' phase, inmates will exist with the minimal amount of property and exercise yard privileges available. Yet the proposal makes no provisions as to the duration of this extreme deprivation.

**Accommodation:** None.

**Response 12D:** The department recognizes that no program designed to help human beings change their behavior for the better is 100% effective. Please refer to Commenter #9, Response 9C.

**Comment 12E:** Commenter states that with two placement categories of racial housing integration and gang participation implemented, 80% of all inmates (level 3 & 4) are labeled as gang members and/or associates. These two vague indicators will in effect subject the majority of inmates housed in BMU under these headings to long term placement due to the nature of the prison environment. This proposal is ultimately setting and/or making it conducive to inmates to act out violently in order to secure placement in a less restrictive security housing unit.

**Accommodation:** None.

**Response 12E:** In regards to the two vague indicators which will subject the majority of inmates housed in the BMU to long term placement, please refer to Commenter #9, Response 9A and 9C. The BMU is not designed to be a long term housing placement. Placement in the BMU is not based solely on gang membership and validation but on gang behavior and actions defined as disruptive. Inmates who act out while in the BMU will not improve their situations in prison.

**Comment 12F:** Commenter states that the proposed Statement of Reasons does not reflect any recognition and consideration of the mandates of PC 6400. The statute is mandatory and CDCR's failure to comply with PC 6400 renders the visiting changes proposed by section 3334(k) non-compliant with the Administrative Procedures Act which requires compliance with all applicable laws. In addition, the CDCR's finding that restricting inmates visiting for rule violations that do not rise to the level of security threats can not supersede or nullify the legislative finding of A.B. 2133 (2002) concerning the positive value and promotion of inmate visitation.

**Accommodation:** None.

**Response 12F:** Penal Code 6400 states: "Any amendments to existing regulations and any future regulations adopted by the Department of Corrections which may impact the visitation of inmates shall do all of the following:

- (a) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates.
- (b) Recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community.
- (c) Recognize and consider the important role of inmate visitation in preparing an inmate for successful release and rehabilitation.



Visiting is a privilege, not a right. The BMU program allows for continued visitations; however restricts inmates in Step 1 or 2 to non-contact visits. CCR, Title 15 section 3176.4 (e) states “(e) Suspension and or restriction of visiting may be imposed by a classification committee for a specific period of time when there is substantial reason(s) to believe that the inmate poses a threat to the security of the institution/facility and or safety of persons.” The value alluded to within the PC section 6400 as well as CCR, Title 15, section 3176.4 language clearly indicates a desire to support family ties. Given the BMU placement criteria, applying such restrictions is not excessive to the goal being sought in the relatively short duration of the restriction. The inmate has considerable influence over how quickly privileges, such as contact visits, will be restored while in a BMU. Changes in behavior, compliance with program requirements, and a commitment to rehabilitation can shorten the stay in the BMU.

**Comment 12G:** Commenter states that section 3334(a) establishes ‘Classification Committee’ as only authority to place an inmate in the BMU. The proposed regulation is vague and violates the equal protection clause of the state and federal constitutions. It does not specify which committee controls the BMU. The warden chaired ICC or lesser, captain chaired UCC, and it does not specify whether placement can occur prior to a classification hearing or only after.

**Accommodation:** None.

**Response 12G:** Section 3334(a) of the proposed regulations state in part, “An inmate may not be assigned to a Behavior Management Unit (BMU) except on the order of a Classification Committee.” In regards to the regulations not specifying which committee controls the BMU, please refer to Commenter #12, Response 12B.

**Comment 12H:** Commenter states that section 3334(b)(3) proposed regulation allows for placement in BMU for vague and undefined determination of ‘Gang Activity’. It defines gang activity as two acts of gang participation. This is vague and will lead to arbitrary enforcement. Participation has been used by CDCR staff to mean associating with or hanging out with gang members, a functional reality in prison. This subsection is a disingenuous methodology to unlawfully validate (indefinitely segregate) street gang members.

**Accommodation:** None.

**Response 12H:** Section 3334(b)(3)(A) of the proposed regulations outlines one of the reasons an inmate can be referred to a classification committee for placement into the BMU. Inmates that display any pattern, which consists of two or more documented behaviors which indicates an individual’s participation in gang related activity, may be grounds for placement in the BMU. Gang related activity is defined as behavior which indicates an inmate’s participation in a gang, prison gang, street gang or disruptive group as defined in section 3000. Section 3000 defines a gang as any ongoing formal or informal organization, association or group of three or more persons which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, in acts which include, planning, organizing threatening, financing, soliciting, or committing unlawful acts or acts of misconduct classified as serious pursuant to section 3315. Regarding gang behavior as “a functional reality in prison”, the CDCR does not formulate its rules to accommodate inmate politics.

**Comment 12I:** Commenter states that section 3334(c)(5) mandates that all BMU inmates participate in self-help groups. This subsection is oxymoronic. You can not force someone to self-help, by definition self-help is voluntary.

**Accommodation:** None.

**Response 12I:** The department disagrees. The department can mandate an inmate to participate in programs that are beneficial in addressing problems the inmate is currently displaying or has a documented history of (e.g. substance abuse). An example of this mandate could be found in CCR, Title 15, section 3315(f)(5)(K) requiring inmates to attend Alcoholic Anonymous (AA) or Narcotic Anonymous (NA) meetings or assigned to a substance abuse education program to the extent such programs are available. It is the individual's choice to learn and apply the information that is presented. Courts, counties and other agencies mandate such programs as conditions of probation, settlement or as an alternative to jailing (community service).

**Comment 12J:** Commenter states that section 3334(f) for Program Rejection establishes long term retention in the BMU. This proposal violates the equal protection, due process, as well as the cruel and unusual punishment clauses of the U.S. Constitution. Allowing indefinite retention with the scant due process of a simple 'committee review' denies protection and is a violation of due process. To hold a person at the minimum property levels with no exercise indefinitely is cruel and unusual.

**Accommodation:** None.

**Response 12J:** In regards to section 3334(f), please refer to Commenter #9, Response 9C.

**Comment 12K:** Commenter states that section 3334(g) Personal Property restrictions violate the equal protection laws. The BMU is designated as general population housing and any denial of allowable property is punitive, petty, and counter productive. See Faunce v. Denton (1985) 167 Cal. App. 191 which holds that a regulation concerning property can not be used to enforce a policy/regulation that was not adopted in accordance with the Administrative Procedures Act.

**Accommodation:** None.

**Response 12K:** The Department is permanently adopting the proposed BMU regulations in accordance with the Administrative Procedures Act (APA). The proposed BMU regulations were filed with the Office of Administrative Law (OAL) as Emergency Regulations under Penal Code section 5058.3 and were adopted on a temporary emergency basis with the Secretary of State on July 8, 2008. The department is completing the APA process by responding to public comments in regards to the proposed regulations affecting the BMU. In regards to personal property restrictions that violate the equal protection laws, please refer to Commenter #12, Response 12C.

**Comment 12L:** Commenter states that section 3334(g)(1)(B) allows for only one cover religious book. This subsection blatantly violates the 1<sup>st</sup> Amendment right to freedom of religion.

**Accommodation:** Yes.

**Response 12L:** Please refer to Commenter #4, Response 4A for accommodation.

**Comment 12M:** Commenter states that section 3334(g)(1)(C) allows BMU inmates to possess only one soft cover dictionary. This is a ban on reading material and all books.

**Accommodation:** Yes.

**Response 12M:** The department has elected to accommodate this comment by allowing books, magazines, and newspapers (paperback or hardback with cover removed only. Limit does not apply to legal materials), a total of ten. This accommodation is also keeping in compliance with current regulations outlined in CCR, Title 15, section 3190.

**Comment 12N:** Commenter states that section 3334(g)(1)(G) allows BMU inmates to possess only one writing tablet. This is also draconian and ludicrous. It violates the 1<sup>st</sup> Amendment right to free expression.

**Accommodation:** Yes.

**Response 12N:** The department has elected to accommodate this comment by allowing legal pads/tablets and notebooks (no spiral bound), a total of one. This accommodation is also keeping in compliance with current regulations outlined in CCR, Title 15, section 3190.

**Comment 12O:** Commenter states that section 3334(g)(1)(H) restricts BMU inmates to 15 embossed (stamped) envelopes. This proposed regulation is vague and violates the equal protection clause. Does this mean only stamped envelopes will be accepted (i.e. no individual stamps & envelopes). The CDCR itself provides indigent inmates with at least 20 stamped envelopes a month. Interfering with, suppressing, or otherwise limiting inmates ability to communicate with their family is terroristic (sic) and counter productive and a incentive to violence.

**Accommodation:** Yes.

**Response 12O:** The department has elected to accommodate this concern by allowing envelopes, blank and/or pre-stamped, a total of forty. This accommodation is also keeping in compliance with current regulations outlined in CCR, Title 15, section 3190.